IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1120 OF 2006

Naseem Ahmed Shaikh, aged about 35 years, Indian Inhabitant, residing at R. No. 17, 1st floor, Maulana Azad Road, Juna Bum Khana Chawl, Mumbai – 400 008. ... Petitioner

Versus

1. Chandra Iyengar, the Principal Secretary to the Government of Maharashtra, Home Department (Preventive Detention) and Detaining Authority, Mantralaya, Mumbai.
2. The State of Maharashtra through the Secretary to the Government of Maharashtra, Home Department (Preventive Detention), Mantralaya, Mumbai.
3. The Superintendent of Mumbai, Central Prison, Mumbai.
4. The Superintendent of Nasik Road Central Prison, Nasik. ... Respondents

Ms. A.M.Z. Ansari for the petitioner.

Ms. A.S. Pai, A.P.P. for the State.

CORAM : SMT. RANJANA DESAI, & ANOOP V. MOHTA, JJ.

DATE ON WHICH THE JUDGMENT RESERVED : 17TH JANUARY, 2007.

DATE ON WHICH THE JUDGMENT PRONOUNCED : 2ND FEBRUARY, 2007.

JUDGMENT:- (Smt. Ranjana Desai, J.)

1. The petitioner is the wife of Ahmed Abdul Shaikh. The said Shaikh (for convenience, "the detenu") has been detained under the order of detention dated 1/4/2006 under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short, "the COFEPOSA") with a view to preventing him from smuggling goods. The said order has been issued by respondent 1, who is the Principal Secretary (Appeals and Security) Government of Maharashtra, Home Department and the detaining authority. In this petition, the petitioner has challenged the said order.

2. The order of detention along with grounds of detention and the material in support thereof, was served on the detenu on 10/4/2006. In short, it is the case of respondent 1 that the detenu habitually indulges in smuggling of Indian and Foreign currencies and other dutiable goods out of India and smuggling of dutiable goods into India. On 8/10/2005, he was intercepted at Module 2A Departure Hall, Chatrapati Shivaji International Airport, Sahar, Mumbai on his departure from Mumbai to Dubai via Karachi when he was proceeding to transit longue after passing through immigration and Customs to board Pakistan Airlines Flight No.PK 275. Search of his handbag and baggage resulted in the recovery of Foreign currency of US $ 5,000/- and Indian currency of Rs.1,17,000/-. Examination of his checked in baggage

consisting of one zipper bag resulted in the recovery of one packet containing diamonds totally weighing 48.75 carats provisionally valued at Rs.3,29,270/-.

3. It appears that in his statement recorded under the Customs Act, 1962 on 8/10/2005, the detenu admitted the possession of the currencies and diamonds under seizure. He stated that the same were handed over to him by one Mushtaq of Ahmedabad at the instance of one Suleman from Dubai. He stated that he would have delivered the same in Dubai and he was carrying the same for monetary consideration of Rs.5,000/- in addition to the to and fro air fare. He also admitted that he used to make frequent trips abroad. The passport of the detenu revealed that he had made about 23 visits abroad during the last one year.

4. Considering the nature of prejudicial activities, the detaining authority was satisfied that unless the detenu is preventively detained, he was likely to continue to engage in similar prejudicial activities in future and, therefore, it is necessary to detain him under the COFEPOSA with a view to preventing him in future from smuggling goods. She, therefore, issued the impugned order of detention.

5. We have heard Ms. Ansari, the learned counsel appearing for the petitioner, at some length. Ms. Ansari assailed the impugned order of detention on three counts. Firstly, she submitted that there is inordinate delay in considering the representation of the detenu by the detaining authority.

Secondly, she submitted that the sponsoring authority had failed to place before the Advisory Board and the confirming authority the show cause notice dated 4/4/2006 and reply dated 3/5/2006 which are documents of vital nature and which were likely to influence the mind of the Advisory Board and the confirming authority one way or the other. She submitted that since the said vital documents were not placed before the Advisory Board and copies thereof were also not furnished to the detenu, the detention of the detenu is rendered null and void. Thirdly, she submitted that there is inordinate and unexplained delay in passing the order of detention. The learned counsel urged that on these grounds, the order of detention must be set aside.

6. In our opinion, it is not necessary to deal with all the grounds of challenge because, in our opinion, continued detention of the detenu must be set aside on the first ground viz. delay in considering the representation. We shall, therefore, only deal with the said submission.

7. Ms. Ansari contended that in ground (v) of the petition, the petitioner has stated that the detenu is filing representation through the prison authorities addressed to the detaining authority, the Central Government and the State Government. It is further stated that it is incumbent upon the detaining authority, the State Government and the Central Government to satisfy this court as to whether the said representation has been considered by the authorities to whom it is addressed expeditiously and independently because if they fail to do so, the order of detention will have to be set aside on

the ground of violation of Article 22(5) of the Constitution of India.

8. Ms. Ansari contended that the detenu handed over to the Superintendent of Nasik Road Central Prison a copy of the representation addressed to the detaining authority on 9/5/2006 at about 5.30 p.m. She showed us a copy of the covering letter dated 9/5/2006 on which the Superintendent of Nasik Road Central Prison has acknowledged that a copy of the representation has been received by him on 9/5/2006. Ms. Ansari contended that it is alleged that this representation was considered and disposed of by the detaining authority on 20/6/2006 and a rejection reply was issued on 26/6/2006 which was received by the detenu on 29/6/2006. Ms. Ansari contended that the representation of the detenu was disposed of by the detaining authority within a period of 51 days. She submitted that though the detaining authority was available, and has filed affidavit in reply, she has not given any explanation for this delay. On the contrary, she has stated that the contents of this paragraph refer to State Government and she will rely on the affidavit filed by the State Government. The relevant dates are found in the affidavit of Sharad Balkrishna Pawaskar, the Under Secretary, Home Department (Special), Government of Maharashtra. Ms. Ansari contended that it was incumbent on the detaining authority to file a reply explaining the time taken to dispose of the representation. She submitted that if the detaining authority though available to file a reply, does not file a reply, that is fatal to the detention order. In support of this submission, Ms. Ansari relied on the judgments of the Supreme Court in ***Bhut Nath Mate v. The State of***

West Bengal, AIR 1974 SC 806, Shaikh Hanif & Ors. v. State of West Bengal, AIR 1974 SC 679, Jagdish Prasad v. State of Bihar & Anr., AIR 1974 SC 911 and Mohinuddin v. District Magistrate, Beed & Ors., AIR 1987 SC 1977 and Gazi Khan alias Chotia v. State of Rajasthan & Anr., 1990 Cri.L.J. 1420.

9. Ms. Ansari submitted that the affidavit of Mr. Sharad Pawaskar, the Under Secretary, can never be a substitute for the affidavit of the detaining authority. She submitted that in any case, Mr. Sharad Pawaskar has not given any proper explanation. She submitted that at every stage there is a delay in processing the representation. She pointed out that the representation which was received by the jailer on 9/5/2006 was received in the department of the Government on 16/5/2006. Why it took seven days to reach the department of the Government is not explained. Para-wise comments were called on 16/5/2006. They were received from the sponsoring authority on 6/6/2006. Ms. Ansari contended that though the sponsoring authority has filed affidavit, no proper explanation is given as to why the sponsoring authority took such a long time to send para-wise comments. In this connection, Ms. Ansari relied on the judgment of the Supreme Court in ***Rama Dhondu Borade v. V.K. Saraf, Commissioner of Police & Ors., AIR 1989 SC 1861***.

10. Ms. Ansari pointed out that though the detaining authority is said to

have considered and rejected the representation on 9/6/2006, the rejection reply was given on 16/6/2006 and it was received by the detenu on 17/6/2006. The learned counsel submitted that this delay is not explained. Ms. Ansari submitted that inaction of any part of the government machinery renders the detention order invalid. In this connection, the learned counsel relied on the judgment of the Supreme Court in ***Vijay Kumar v. State of Jammu & Kashmir, AIR 1982 SC 1023***.

11. Ms. Ansari contended that it is not open to the detaining authority to produce the record of the departments of the government in this court and try to convince this court by showing the noting made in the files that there is no delay in considering the representation. She submitted that such a practice is deprecated by the Supreme Court in ***Rajindra v. Commissioner of Police, Nagpur Division and Ors., 1994 Supp. (2) SCC 716***. Mr. Ansari submitted that on account of delay in considering the representation of the detenu, there is a violation of detenu's rights under Article 22(5) of the Constitution and, therefore, the order of detention must be set aside.

12. As against this, Ms. Pai, the learned A.P.P. submitted that there is no delay in considering the representation of the detenu. She submitted that it is true that the detaining authority has not explained the delay. However, all the relevant dates are given by Mr. Sharad Pavaskar, the Under Secretary, Home Department (Special), Government of Maharashtra, and if those dates are

considered, it would be evident that there is no delay in considering the representation. Ms. Pai contended that it is true that the detaining authority is expected to file his affidavit explaining the time taken to consider the representation. However, in a given case, if the detaining authority does not file his affidavit, it may not be fatal to the detention order. In this connection, the learned A.P.P. relied on the judgment of the Supreme Court in ***Madan Lal Anand v. Union of India, AIR 1990 SC 176***.

13. Ms. Pai contended that calling of para-wise comments from the sponsoring authority is not a futile exercise. She submitted that time taken to submit para-wise comments has been explained in this case by the officer of the sponsoring authority. In this connection, she relied on ***Kantilal Shah v. State of Tamil Nadu & Ors., 2002 Cr.L.J. 261***.

14. Ms. Pai, the learned A.P.P. contended that the detaining authority is not expected to explain each day's delay. The representation must be disposed of within a reasonable time. No fix time-frame can be laid down. She submitted that if the approach of the detaining authority is not callous, the detention order cannot be quashed on the ground that there are some patches of unexplained delay. In this connection, the learned A.P.P. relied on the judgments of the Supreme Court in ***Shri Ram Sukrya Mhatre v. R.D. Tyagi & Ors. 1994 Cr.L.J. 63, Union of India & Anr. v. Sneha Khemka & Anr. (2004) 2 SCC 570***.

15. The learned A.P.P. submitted that if the explanation given by Mr. Sharad Pawaskar, the Under Secretary, Home Department (Special), Government of Maharashtra, is examined in the light of the above judgments, the order of detention cannot be set aside on the ground that there is delay in considering the representation.

16. We shall now refer to the various judgments to which our attention is drawn by the learned counsel. In ***Bhut Nath' case (supra)*** the District Magistrate Bardwan, who had issued the detention order had not filed the affidavit-in-reply. The affidavit was filed by the Deputy Secretary on perusal of the record. The Supreme Court observed that a Deputy Secretary who merely peruses the records and swears an affidavit is a poor proxy. The Supreme Court clarified that the fact of subjective satisfaction, solemnly reached, considering relevant and excluding irrelevant facts, sufficient in degree of danger and certainty to warrant pre-emptive casting into prison, is best made out by the detaining District Magistrate and not by one who professionally reads records and makes out a precis in the form of an affidavit. The Supreme Court emphasised this infirmity because according to it routine summaries of files, marked as affidavits, appear in the returns to rules nisi, showing scant courtesy to the constitutional gravity of deprivation of civil liberty. The Supreme Court clarified that in some cases, where a valid reason for the District Magistrate's inability to swear affidavits

directly has been furnished, it has accepted the concerned Deputy Secretary's affidavit but this should, however, be the exception and not the rule.

17. In ***Shaikh Hanif's case (supra)***, the District Magistrate, who had issued detention order had not filed the affidavit. Affidavit was filed by the Deputy Secretary. The Supreme Court observed that in response to the rule nisi the counter-affidavit should be sworn by the District Magistrate or the authority on whose subjective satisfaction the detention order was passed. It was clarified that if for sufficient reason shown to the satisfaction of the court, the affidavit of the person who passed the order of detention cannot be furnished, the counter-affidavit should be sworn by some responsible officer who personally dealt with or processed the case or other officer duly authorised under the rules of business. The Supreme Court further clarified that the failure to furnish the counter-affidavit of the Magistrate who passed the order of detention, is an impropriety and in most cases it may not be of much consequence, but in a few cases, for instance where malafides or extraneous considerations are attributed to the Magistrate or the detaining authority, it may, taken in conjunction with other circumstances, assume the shape of serious infirmity, leading the court to declare the detention illegal.

18. In ***Jagdish Prasad's case (supra)*** also the detaining authority had not filed the affidavit. The Supreme Court took a serious note of the non-

filing of affidavit and observed as under:

> *"Here some Upper Division Assistant (Special), Home Department, has sworn an affidavit, not with personal knowledge but with paper wisdom. It is difficult to appreciate why in return to a rule nisi in a habeas corpus motion, it is not thought serious enough even where liberty of a citizen is chocked off, to get the District Magistrate to explain his subjective satisfaction and the grounds therefor. Not even why he is not available nor the next best, the oath of a senior office in the Secretariat who had been associated with the handling of the case at Government level, Mechanical affidavits, Miniaurising the files into a few paragraphs, by some one handy in the Secretariat cannot be regarded as satisfactory. This not a mere punctilio of procedure but a probative requirement of substance."*

19. In ***Mohinuddin' case (supra)*** the Supreme Court has observed as under:

> *"In return to a rule nisi issued by the Supreme Court or the High Court in a habeas corpus petition, the proper person to file the affidavit is the District Magistrate who had passed the impugned order of detention and he must explain his subjective satisfaction and the grounds therefore; and if for some good reason the District Magistrate is not available, the affidavit must be sworn by some responsible officer like the Secretary or the Deputy Secretary to the Government in the Home Department who personally dealt with or processed the case in the Secretariat or submitted it to the Minister or other Officer duly authorised under the Rules of Business framed by the Governor under Art. 166 of the Constitution to pass orders on behalf of the Government in such matters."*

20. In ***Madan Lal's case (supra)***, the Supreme Court was dealing with the order of detention issued under the provisions of COFEPOSA. The counter-affidavit was affirmed by the Under Secretary to the Government and not by the detaining authority. It was submitted that averments made in the said counter-affidavit should not be taken note of. The Supreme Court observed that in that case no personal allegations of malafides or bias had been made by the detenu against the detaining authority. The Supreme Court observed that merely because the detaining authority has not sworn an affidavit it will not in all circumstances be fatal to the sustenance of the detention order.

21. From the above judgments it is clear that once a person's liberty is curtailed on account of a preventive detention order, the person who issues the said order is expected to file affidavit justifying the detention order. This is because normally a person cannot be detained without trial and if this drastic power is exercised, the onus of justifying its exercise is obviously on the person who issues the order. He is expected to use this power after due application of mind and on being satisfied of the need of incarcerating a person without trial. None can speak about his state of mind except he himself.

22. An affidavit filed by another person on perusal of documents will be a poor substitute for the affidavit of the detaining authority. It is possible,

however, that in a given case on account of genuine and good reasons, the detaining authority is not available to file affidavit. In that case the reasons for his/her absence will have to be stated on affidavit and if the said reasons are found to be sufficient and good reasons, affidavit filed by another equally high ranking officer on the basis of record of the case can be gone into.

23. Though the detaining authority is expected to file a reply, not in all cases, absence of the affidavit of the detaining authority is a serious infirmity. In cases where there are allegations of malafides or bias, affidavit of the detaining authority is required. In other cases absence of affidavit of the detaining authority may not always be fatal. Reasons stated on affidavit as to why the detaining authority could not file affidavit will be relevant in such cases. Such case however should be an exception and not the rule.

24. The present case will have to be examined in the light of the above principles. Here the detaining authority has filed her affidavit justifying the detention order but while replying to paragraphs 4(v) and 4(vi) which inter alia pertain to the representation made to her and which call upon her to satisfy this court that the representation has been considered expeditiously, the detaining authority has stated that the contents of the said paragraph refer to the State Government and the Advisory Board and hence the affidavit filed by them may be referred to.

25. In our opinion, this is a glaring case of non-application of mind. The detaining authority is not conscious of the onus and responsibility which rests on her shoulders. She has placed the burden of satisfying the court that there is no violation of Article 22 (5) of the Constitution of India on the Deputy Secretary while in law it is only she who can state why there was no violation as alleged because the representation is addressed to her. She has disowned the responsibility. It is also an admitted position that she was very much available to file affidavit. No explanation is offered as to why she has not replied to the paragraphs of the petition which pertain to the representation addressed to her. It is true that there are no serious allegations of malafides or bias against the detaining authority in this case. Ordinarily if explanation was given as to why she has not replied to the relevant paragraph, we would have overlooked this infirmity as inconsequential but here no such explanation is offered. On the contrary the detaining authority has filed an affidavit and in that affidavit she has stated that paragraph of the petition which pertain to the representation addressed to her refer to the State Government and hence that affidavit may be referred to. There can be no other glaring case of non-application of mind.

26. Assuming however that we can accept the Under Secretary's affidavit, we will examine whether it is possible to hold that there is no delay in considering the representation. It appears from the acknowledgment shown

to us by Ms. Ansari that the representation of the detenu was received by the jail on 9/5/2006. As per the affidavit of Mr. Pavaskar, it was received in the department on 16/5/2006. Therefore, the representation was received after seven days. No affidavit has been filed by the jailer to state how it was dispatched to the Home Department. This delay remains unexplained. According to Mr. Pavaskar, the para-wise comments on the points raised were called from the sponsoring authority on 16/5/2006 and the para-wise comments of the sponsoring authority were issued by its letter dated 5/6/2006 and were received in the department on 6/6/2006. Therefore, 21 days were taken by the sponsoring authority in sending the para-wise comments.

27. Mr. Pravin Kumar, Assistant Commissioner of Customs has filed an affidavit. In his affidavit, he has stated that the representation of the detenu was received by the sponsoring authority on 26/5/2006 for para-wise comments. 27/5/2006, 28/5/2006 and 4/6/2006 were holidays. According to Mr. Pravin Kumar, the para-wise comments were forwarded to the Home Department on 6/6/2006. There is no explanation as to why the representation of the detenu was received by the sponsoring authority as late as on 26/5/2006. Even if allowance is made for three days which were holidays, it must be accepted that there is about 18 days' unexplained delay in collecting para-wise comments from the sponsoring authority.

28. Mr. Pravin Kumar has stated that the representation along with para-wise comments was submitted by the concerned assistant to the Deputy

Secretary on 8/6/2006. The Deputy Secretary made his endorsement on 9/6/2006 and forwarded it to the detaining authority. The detaining authority considered all the facts of the case and the comments of the sponsoring authority and rejected it on the same day i.e. on 9/6/2006. However, the rejection reply was given on 16/6/2006 and it was received by the detenu on 17/6/2006. Therefore, there is six days' unexplained delay in communicating the reply to the detenu. Thus, the representation of the detenu was considered within 51 days. Long spans of period during this stretch of 51 days have remained unexplained.

29. It is true that as stated by the Supreme Court in ***Abdul Salam alias Thiyyan v. Union of India, AIR 1990 SC 1446*** and reiterated by the Supreme Court in ***Sri Ram Sukrya Mhatre' s case (supra)***, the representation of the detenu has to be disposed of expeditiously but no hard and fast rule as to the measure of reasonable time can be laid down. Each case has to be considered from the facts presented therein and if there is no negligence or callous inaction or avoidable red tapism, it does not warrant interference. As stated by the Supreme Court in ***Sneha Khemka' s case (supra),*** the representation of the detenu must be disposed of within a reasonable time. It is not the law that each and every day's delay has to be explained but, if the explanation offered by the detaining authority indicates that at every stage different departments of the State have shown callous and negligent approach and that has caused delay, continued detention will have to be set aside. In

order to explain certain patches of delay, the learned A.P.P. tried to place before us the files of the respondents. In this connection, our attention is drawn to the judgment of the Supreme Court in ***Rajindra' s case (supra)***. In that case, it was contended that there was inordinate delay in dealing with the representation. The learned Additional Solicitor General tried to satisfy the Supreme Court that between 18/3/1993 and 7/4/1993, there were only nine working days and, therefore, there was no delay. The Supreme Court observed that the learned Additional Solicitor General had overlooked the fact that the Central Government had failed to explain the delay between 6/3/1993 and 18/3/1993. An effort was made by the learned Additional Solicitor General to persuade the Supreme Court to adjourn the matter to enable the Central Government to produce the file. The Supreme Court observed that the court is expected to go by the pleadings and the Central Government is expected to place the factual material in connection with the detention order by filing a counter affidavit so that the petitioner can have an opportunity to meet that factual information. The Supreme Court observed that the indulgence shown by the courts in perusing the file seems to have given an impression that the Central Government is under no obligation to file a counter-affidavit to explain the delay. The following observations of the Supreme Court are material and may be quoted.

> *"We propose to remove this impression once and for all if it persists and to impress upon the Central Government that it is under obligation to file its counter within the time permitted by the Court failing which the case may go by*

> *default. Let it be clearly understood that production of the file is not a substitute for a counter to be filed by the Central Government. The Court peruses the file not to absolve the Central Government of its responsibility to file a counter but to satisfy its conscience if it notices ambiguities in the Government' stand. If the Courts have shown indulgence by perusing the file where affidavit is not filed for good reason, let that indulgence not be misused by construing it to be a licence to dispense with the obligation to file a return. In the instant case, no counter was filed and the High Court has taken note thereof but, if we may say so with respect, the Court has shown indulgence by observing that the counter is not filed `presumably because there is no specific allegation in this behalf in the petition.' Let it be stated that once a representation is made, the detenu is entitled to the representation being dealt with expeditiously. If there is some ex facie delay, the obligation is on the State to explain that delay. There is no question of a specific allegation to be made in the petition except pointing out by placing facts that there has been a delay which ex facie calls for an explanation and that obligation has to be discharged by filing a proper counter and explaining the delay. The Courts have not been unduly strict in insisting that each day' delay must be explained but it is obligatory on the part of the Government to show by filing a counter-affidavit that it had acted promptly in dealing with the representation. What is essential is that the Court must be satisfied that the officers dealing with the representation were not indifferent to the urgency of the situation of the detenu being in jail."*

30. It is true that in this case, the detaining authority has filed affidavit but, as already noted by us, she has shown a callous approach by not replying to the contentions raised in the petition, which pertain to the representation addressed to her. Against the backdrop of this peculiar fact and in the light of the judgment of the Supreme Court in ***Rajindra' case (supra)***, we are not inclined to peruse the files, which are sought to be produced by the respondents.

31. We may then refer to the judgment of the Supreme Court in ***Venmathi Selvam (Mrs.)' scase (supra)***. In that case, the delay was not very long. But it was not explained. The Supreme Court held that though the delay is not long, it has remained unexplained. The Supreme Court further observed that though the delay by itself is not fatal, the delay which remains unexplained becomes unreasonable. The Supreme Court observed that inspite of this well settled legal position, the State Government had failed to explain satisfactorily that it had dealt with the representation of the detenu as promptly as possible. The Supreme Court set aside the continued detention of the detenu after observing that it appears that the State Government is oblivious of the correct legal position and its obligations in matters of preventive detention. It has dealt with the representation of the detenu in a routine manner and this indifference of the Government is the cause for rendering the continued detention of the detenu illegal. It is also necessary to refer to the judgment of the Supreme Court in ***Vijay Kumar' scase (supra)***. In that case, the representation of the detenu dated 29/7/1981 was submitted by him to the Superintendent, Central Jail, Jammu. As per the affidavit of the Superintendent, Central Jail, Jammu, the said representation was forwarded to the Government at Srinagar vide office letter dated 29/7/1981. Wireless message was also sent to the Government to intimate that the detenu's representation had been forwarded. As no representation was received, a wireless message was sent by the State to the jail that the representation was

not received. Duplicate copy of the representation was called for. The Deputy Secretary to the Government of Jammu and Kashmir, Home Department, Jammu, in his affidavit stated that the representation was received by the Home Department at Srinagar on 12/8/1981. Comments from C.I.D. Counter Intelligence were called for on 14/8/1981. File was processed on 24/8/1981 and placed before the Home Secretary on 25/8/1981, who recommended the same for approval on 28/8/1981 and the Chief Minister rejected the representation on 31/8/1981. The Supreme Court noted that representation which was handed over to the jail on 29/7/1981 reached Srinagar on 12/8/1981, which shows a time lag of 14 days. It was disposed of on 31/8/1981. The time lag of 19 days was not explained. The Supreme Court commented on the time taken by the jail authorities in communicating the representation to the Government. The Supreme Court observed that the intermediary authorities who are communicating authorities have also to move with an amount of promptitude so that the statutory guarantee of affording earliest opportunity of making the representation and the same reaching the Government is translated into action. It was further observed that the corresponding obligation of the State to consider the representation cannot be whittled down by merely saying that much time was lost in the transit. The further observations of the Supreme Court are material and, hence, may be quoted.

> *"If the Government enacts a law like the present Act empowering certain authorities to make the detention order*

> *and also simultaneously makes a statutory provision of affording the earliest opportunity to the detenu to make his representation against his detention, to the Government and not the detaining authority, of necessity the State Government must gear up its own machinery to see that in these cases the representation reaches the Government as quickly as possible and it is considered by the authorities with equal promptitude. Any slackness in this behalf not properly explained would be denial of the protection conferred by the statute and would result in invalidation of the order."*

32. In this case, the representation of the detenu dated 9/5/2006 was received in the Home Department on 16/5/2006. No affidavit is filed by the jailer explaining this delay. There is no acceptable explanation offered as to why so much time was taken in communicating the para-wise comments to the detaining authority. In the light of the judgment of the Supreme Court in ***Vijay Kumar's case (supra)***, it must be stated that the machinery of the State Government should have at every stage acted promptly and any slackness at any stage, if not properly explained, would result in violation of the detenu's right under Article 22(5) of the Constitution. The State Government has not stated why if the representation was rejected by the detaining authority on 9/6/2006, the rejection reply was given to the detenu on 16/6/2006.

33. In this connection, it is necessary to refer to ***Rama Dhondu Borade's case (supra)***. In that case, the detenu's representation dated 26/9/1988 was considered and the final decision to reject it was taken on 27/10/1988 and the decision of the Central Government rejecting the representation was

communicated to the detenu through wireless message on 31/10/1988. In explaining the delay from 17/10/1988 to 27/10/1988, it was stated in the counter-affidavit that 18th, 20th, 22nd and 23rd October, 1988 were the closed holidays; but no explanation was given as to why the representation was not attended to and disposed of on 17th, 19th, 21st, 24th to 26th October, 1988. In explaining the delay in communicating the decision taken on 27/10/1988, it was stated that 29th and 30th October, 1988 were holidays but the affidavit was silent as to why that decision had not been communicated to the detenu either on 27th or 28th October, 1988. There was 14 days delay in passing the information required by the sponsoring authority. The State Government in its affidavit had stated that it received the para-wise comments of the detaining authority on the representation of the detenu on 12/10/1988 and thereafter it forwarded the same to the sponsoring authority. The detaining authority filed a separate affidavit stating that since the officer of the Dadar police station was attending the meeting of the Advisory Board on the 7th and 11th October, 1988, a delay of 7 days had occurred in forwarding his para-wise comments. The Supreme Court found that these explanations were not at all satisfactory. The Supreme Court was of the view that the respondents had not diligently collected the informations required and thereby caused considerable delay. Thus, seven days' delay in sending para-wise comments was regarded as inordinate delay. As we have already stated, in this case, there is about 7 days delay in forwarding the detenu's representation to the department; about 18 days' delay in sending para-wise comments and about 7 days' delay in communicating the rejection reply. In the facts of this case, we are satisfied

that there is an unexplained delay in considering the representation of the detenu and it is fatal to the continued detention of the detenu.

34. In view of the above, it is not necessary to deal with the other submissions of Ms. Ansari. In the result, the continued detention of the detenu under the order of detention dated 1/4/2006 issued by respondent 1 - Principal Secretary (Appeals and Security) Government of Maharashtra, Home Department, Mantralaya, Mumbai, is quashed and set aside. Detenu - Ahmed Abdul Shaikh is ordered to be released forthwith unless otherwise required in any other case.

[SMT. RANJANA DESAI, J.]

[ANOOP V. MOHTA, J.]